

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION¹**

IN THE MATTER OF:

**Leland Limited,

(Respondent).**

PHMSA CASE NUMBER

02-364-SB-EA

PHMSA - 2005 - 20790 - 1

COMPROMISE ORDER

By this Order I find that Leland Limited, Inc. (Respondent) committed one (1) violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180 and I assess Respondent a \$6,000 civil penalty for this violation.

I. Summary

Respondent: Leland Limited, Inc.
2614 South Clinton Ave.
South Plainfield, NJ 07080
ATTN: Ms. Dawn Klinger, Vice President

No. of Violations: 1

Maximum Possible Civil Penalty: \$32,500

Total Payment Due: \$6,000

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) redelegating the hazardous materials safety functions from the Research and Special Programs Administration to the Administrator, PHMSA.

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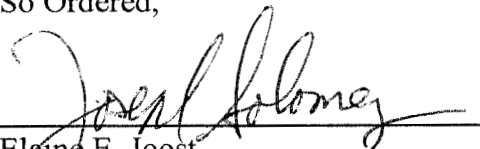
II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and find that the terms as outlined therein are in the best interest of justice. I find Respondent committed the violations as described in the Agreement, which is attached as Addendum A to this Order, and I impose a civil penalty of **\$6,000**. Respondent must pay the civil penalty in accordance with the instructions contained in addendum B to this Order.

The attached Agreement, in its entirety, is incorporated into this Order. All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

Dated: 3-17-05

So Ordered,


Elaine E. Joost
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

CERTIFICATE OF SERVICES

This is to certify that on the 17th day of March, 2005, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Leland Limited, Inc. 2614 South Clinton Ave. South Plainfield, NJ 07080 ATTN: Ms. Dawn Klinger, Vice President	Original Order with Copy of Agreement Certified Mail Return Receipt
Mr. Doug Smith, Enforcement Officer Office of Hazardous Materials Enforcement 400 Seventh Street, S.W. Washington, D.C. 02590-0001	One Copy (without enclosures) Personal Delivery
Ms. Colleen Abbenhaus, Chief Hazardous Materials Enforcement Office Eastern Region, DHM-42 820 Bear Tavern Road, Suite 306 West Trenton, NJ 08628	One Copy (without enclosures) Regular mail
Thomas D. Seymour, Attorney Research and Special Programs Administration 400 Seventh Street, S.W. Washington, DC 20590-0001	One Copy Personal Delivery
U.S. DOT Dockets U.S. Department of Transportation 400 Seventh Street, S.W., RM PL-401 Washington, D.C. 20590	One Copy Personal Delivery


Thomas D. Seymour

COMPLETED

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JAN 03 2004

Addendum A
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By: Leland Limited, Inc.
So. Plainfield, NJ 07080

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION**

In the Matter of:

Leland Limited, Inc.

**2614 South Clinton Ave.
South Plainfield, NJ 07080**

Attn: Leland Stanford, President

RSPA Case No. 02-364-SB-EA

2003 JUN 24 10 2 09

U.S. DEPT. OF TRANSPORTATION
RSPA
OFFICE OF CHIEF COUNSEL

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Leland Limited, Inc. (Respondent), an importer of non-flammable gasses who then re-ships the hazardous material gasses as a consumer commodity.

and

The Research and Special Programs Administration (RSPA), a modal Administration of the United States Department of Transportation.

II. Authority/Jurisdiction

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. Respondent acknowledges:

(1) As a shipper of hazardous materials, it is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the authority of (a) the Secretary of Transportation, (b) the RSPA's Associate Administrator for Hazardous Materials Safety, and (c) RSPA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301);

(2) RSPA has sufficient proof to show by a preponderance of the evidence that Respondent violated the Federal regulations listed in Section V below; and

(3) That it received proper notice of RSPA's action in this proceeding.

III. Background

A. On April 2, 2002 an inspector from RSPA's Office of Hazardous Materials Enforcement (OHME) conducted an unannounced routine compliance inspection at Leland Limited, Inc. pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. The inspection was based upon the inspectors' observation of a shipment, belonging to Respondent, conducted at the Washington Township Police Department, Sewell, NJ. During the inspection, the inspector discovered 1 alleged violation of the HMR. At the conclusion of the investigation an "exit briefing" was provided to Leland Limited, Inc. during which the inspector discussed the probable violations observed and also discussed the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the inspector submitted a report to OHME's Eastern Region Chief, who reviewed it for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to RSPA's Office of the Chief Counsel with a recommendation that it initiate a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

C. By a Notice of Probable Violation, dated August 6, 2002, the Office of the Chief Counsel proposed a civil penalty in the amount of \$15,000. RSPA proposed the civil penalty in accordance with the Penalty Guidelines found at 49 C.F.R. Part 107, Subpart D, Appendix A, Section II. The alleged violations involved are listed in Section V below.

IV. Basis of Agreement

A. Corrective Action. Respondent timely replied to the Notice on August 19, 2002, and requested an informal conference. Respondent submitted evidence of additional corrective actions it had taken subsequent to issuance of the Notice. The following is a summary of Respondent's corrective actions.

Violation No. 1: Respondent has changed its procedures so that all ORM-D labels are now applied to all cartons in the Production Department, thus the shipping manager can inspect all incoming goods to ensure compliance before he accepts finished packaging for shipping.

B. Informal Conference. Based upon the corrective action documentation provided by Respondent the Office of the Chief Counsel proposed a settlement offer in a November 8, 2004 letter. After a brief telephone conversation on December 10, 2004, between the parties, Respondent accepted the settlement offer.

C. Small Business Size. Evidence in the record also substantiates that Respondent is a small business.

V. Compromise Civil Penalty

Based on all the evidence at hand, parties now agree to the compromise penalty amount listed below:

Violation No. 1: Offering a hazardous material --Nitrous oxide, 2.2, UN 1070--for transportation in commerce when the material was not declared as hazardous, in violation of 49 C.F.R. §§ 172.2(a), 172.316, 173.306(h), and 173.156.

Proposed Penalty Amount in the Notice: \$15,000 Compromise Agreement Amount: **\$6,000**

Total Compromise Agreement Amount: **\$6,000**

VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, RSPA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- (1) The nature, circumstances, extent, and gravity of the violation;
- (2) The degree of culpability and history of prior violations;
- (3) Respondent's size;
- (4) Respondent's ability to pay the penalty and its ability to continue to do business; and
- (5) Other matters as justice may require.

Documentation of Respondent's corrective actions for this violation and, the fact that Respondent is a small business, justify assessing a civil penalty of **\$6,000**.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of **\$6,000** as full satisfaction of the civil penalty proposed in the Notice.

B. By entering into this agreement, Respondent waives:

(1) Any right to present further written or oral explanations, information, and arguments in this matter;

(2) Any right to Administrative appeal and

(3) Any right to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

C. This Agreement resolves only the violations noted in RSPA Case No. 02-364-SB-EA as referenced in Section V of this agreement. This violation constitutes a prior violation under 49 U.S.C. § 5123 if Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 et seq., or the HMR.

D. After Respondent returns this signed Agreement, RSPA's representative will present the Agreement to the Chief Counsel requesting that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

E. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

VIII. Miscellaneous Provisions:

A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and RSPA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

Addendum A

Addendum A
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D. Respondent must return the signed Agreement to:

Robert M. Kern
United States Department of Transportation
Research and Special Programs Administration
Office of the Chief Counsel
400 Seventh Street, S.W., Room 8417
Washington, D.C. 20590-0001

IX. Authorized Signatures

For [Respondent]

Signature



Date: JAN 5, 2005

LEAND STANFORD

Typed or Printed Name

PRESIDENT/CEO

Title or Position

22-2205249

Respondent's Federal Tax ID No.¹

For RSPA:

Robert M. Kern
Attorney

Date: 12-29-2004

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). RSPA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

Payment Information

Respondent must pay a total civil penalty of \$6,000 in accordance with the following:

Due date

Respondent must pay the civil penalty within 30 days of the date of this Order.

Payment Method

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer.

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, OK 73125
Telephone (405) 954-8893.

(2) Check or Money Order.

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<http://diy.gov/hazmat>

Interest and Administrative Charges

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent (31 C.F.R. § 901.3).

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
THE FEDERAL AVIATION ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (Provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (Provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (Provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
9. <u>BENEFICIARY (BFN) - AGENCY LOCATION CODE</u> <u>BNF=/ AC 69-00-1105</u>	10. <u>REASONS FOR PAYMENT</u> Example: PHMSA - Payment for Case # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO.- "021030004". Ensure the sending bank enters this nine-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. EXAMPLE; \$10,000.00

Block #7 - RECEIVER NAME - "TREAS NYC." Ensure the sending bank enters this abbreviation; it must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIARY- AGENCY LOCATION CODE - "BNF=/AC-69001105"
Ensures the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To
ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-8893.